IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 4084 of 2006()

CMP NO.1067/06 IN CC.244/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PAYYOLI

.....

PETITIONER/1ST ACCUSED:

USMAN HAJI
S/O.IBRAHIM, PUTHOLI HOUSE,
VILLIAPPILLI AMSOM,
MAYYANNUR DESOM, KOZHIKODE DISTRICT.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PAYYOLI POLICE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4084 of 2006

Dated this the 20th day of December 2006

O R D E R

The petitioner/first accused faces indictment in a prosecution under Section 408 read with 34 I.P.C. Three witnesses were examined in chief. On that day, the petitioner's counsel was not ready for cross-examination and they were bound over on payment of cost. When the matter came up for cross-examination on the next date, examination could not be conducted as the learned Prosecutor was not available. Witnesses were directed to appear on a third occasion. On the third occasion also they could not be examined as the counsel for the petitioner was not ready. He prayed for time to cross-examine the witnesses. The learned Magistrate did not grant the said request. Later, an application was filed under Section 311 Cr.P.C to recall Pws 1 to 3. The learned Magistrate, by the impugned order, took the view that the petition is without merit and the powers under Section 311 Cr.P.C do not deserve to be invoked.

2. The learned counsel for the petitioner submits that the decision of the learned Magistrate is causing the petitioner an irreparable loss and prejudice. Pws 1 and 2 are the most crucial witnesses to be examined in the case and denial of opportunities to cross-examine Pws 1 to 3 would virtually cause injustice. Though the witnesses were compelled to come to court on three different occasions by now, the petitioner is not responsible for the second of such occasions. As regards occasions 1 and 3, the learned counsel for the petitioner does not dispute the role of the accused in obliging the witnesses to come to the court.

3. The plight of the witnesses do deserve consideration. At the same time, the conscience of the court will remain unsatisfied if for the inability of the counsel to appear and cross-examine the prosecution witnesses, the accused were to suffer. The rival interests and concerns can be balanced by issuing an appropriate direction for payment of cost to Pws 1 to 3. Such direction, I am satisfied, shall meet the ends of justice ideally in the facts and circumstances of the case.

4. In the result, this Criminal Miscellaneous Case is allowed. The petitioners shall be permitted to recall Pws 1 to 3 for cross-examination on condition that the petitioner deposits before the learned Magistrate, an amount of Rs.500/- (Rupees five hundred only) each as cost for the three witnesses in addition to normal payments due to them. The said amount shall be handed over to Pws 1 to 3 when they appear for the cross-examination.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006